

IN THE MATTER OF FACTFINDING

STATE EMPLOYMENT
RELATIONS BOARD

BEFORE

2008 FEB 20 A 11:08

NORMAN R. HARLAN, FACTFINDER

STATE OF OHIO-STATE EMPLOYMENT RELATIONS BOARD - CASE NO. 07-MED-11-1192

BOARDMAN TOWNSHIP WORKERS ASSOCIATION

Hearing; February 8, 2008

AND

REPORT: FEBRUARY 19, 2008

BOARDMAN TOWNSHIP TRUSTEES

APPEARANCES

UNION

Dennis Haines, Attorney, Green, Haines, Sgambati Co., L.P.A.
Mark Bestic, TWA President
Michael Moran, TWA Vice President
D.J. Peel, Secretary
Keith Mead, TWA Treasurer

EMPLOYER

Michael Esposito, Attorney, Cleman-Nelson & Associates, Inc.
Jason Loree, Township Administrator
Larry Wilson, Road Superintendent

BACKGROUND

Boardman Township is located in northeastern Ohio in Mahoning County and is about seven miles south of Youngstown, Ohio. The 2000 Census placed its population at 42,518 (forty two thousand five

hundred and eighteen. (Township Exhibit (TE) B) The same Census shows the per capita income at \$23,779 and the Median Family Income at \$59,106.

The Township (the Employer, Management or the Trustees) have been Party to a COLLECTIVE BARGAINING AGREEMENT (CBA) with the Boardman Township Workers Association (the Union or TWA) for at least twenty (20) years. The most recent CBA covers the period of January 1, 2005 through December 31, 2007.

On an unspecified date in 2007 the Parties began bargaining. Initially there were about forty (40) Issues. In late November, 2007 the Parties exercised their right under OHIO REVISED CODE O.R.C.), Section 4117.14(f)(3) to select a Factfinder to address the Issues. They contacted the State Employment Relations Board (S.E.R.B.) and were supplied a Panel of Factfinders. The Under-signed was selected to hear the Issues and was advised by letter of November 23, 2007 from Edward E. Turner, Administrator, Board of Mediation of his selection. Subsequently the Factfinder contacted the Parties and was advised they had agreed to an extension as permitted under 4117.14(f)(5) of the O.R.C. The Factfinder notified S.E.R.B.

Contact was maintained with the Parties through December, 2007 and January, 2008. While bargaining was taking place the Factfinder discussed tentative Hearing dates with Counselor Haines and Counselor Esposito. It was agreed if needed the Hearing would be held on Friday, February 8, 2008 at the Township offices. The Parties were sent a confirmation letter dated December 21, 2007, copied to the S.E.R.B. The Factfinder was advised on January 24, 2008 that the

Township and the Union were meeting. Shortly thereafter he was advised all of the Issues had been resolved except Article 11 - Seniority, specifically the Reduction in Force language found in Section 2. By submission of February 4, 2008 the Union confirmed Article 11-2 was the only outstanding Issue. By follow-up letter of February 5, 2008 the Union advised that the Employer had "changed its position on one proposal which it had previously indicated at the table it was withdrawing."..."It involves Article 9, Safety and Health. The Township wants Section 9 of Article 9 of the parties' previous agreement deleted, and the Union wants the language as is." Prior to the Hearing Management confirmed that Section 9 of Article 9 was at issue as well as Article 11-Section 2. Both Parties supplied the Position Statements required by the O.R.C. Section 4117.14(3)(a).

CONTRACTUAL REFERENCES

LABOR AGREEMENT BETWEEN:

TOWNSHIP WORKERS ASSOCIATION OF BOARDMAN **AND**
BOARDMAN TOWNSHIP TRUSTEES-MAHONING COUNTY, OHIO

JANUARY 1, 2005 THOUGH DECEMBER 31, 2007

ARTICLE 9 - SAFETY AND HEALTH

Section 9: "Except in the case of an emergency and whenever practical, the Township shall continue its present practice that when members are engaged in snow and ice removal, there shall always be a rider to accompany the driver for assistance in watching traffic, watching when the truck is backing or raising and assist the driver with direction or pattern. "Under this section, an emergency exists when there are not enough drivers available to staff the number of vehicles determined necessary by the Superintendent."

ARTICLE 11 - SENIORITY

Section 2:

A. "In the event it becomes necessary to lay off employees the following order shall be followed:

1. Part time and seasonal employees.
2. Employees who have not completed their probationary period.
3. Employees who have completed their probationary period.

B. When a lay off is necessary employees shall be laid off in accordance with the above order on the basis of seniority. Employees who are laid off shall remain in layoff status for a period not to exceed two (2) years from the date of lay off.

C. The Union shall receive a copy of all such lay off notices.

D. All regular full time employees shall be given a minimum of ten (10) working days advance written notice of lay off indicating the circumstance which makes the lay off necessary.

E. In the event an employee is laid off, he may, upon request, received payment for earned but unused vacation within ten (10) working days.

F. When it is necessary to increase the work force, following a lay off, employees shall be recalled in the reverse order in which bargaining unit members were laid off.

G. An employee on lay off will be given ten (10) working days notice of recall from the date on which the Township sends the recall notice to the employee by certified mail to his last known address as shown on the Township records).

H. No new employees shall be hired until all employees on lay off status have been recalled or are offered recall.

I. When laid off employees, who have completed their probationary period, are rehired, they will not have to serve another probationary period."

THE HEARING

The Parties were advised under the Ohio Revised Code (Section 4117.14(G)(7) he is required to consider the following:

"(a) Past collectively bargained agreements, if any, between the parties;

(b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.

(c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the affect of the adjustments on the normal standard of public service;

(d) The lawful authority of the public employer.

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment."

The Factfinder offered to mediate the Issues and the Parties agreed to "give it a try." He met with the Parties individually, first with Management. It proposed deleting Article 9, Section 9. It maintains the provision is too restrictive and required it to use two employees per truck for snow and ice removal even though only one might be needed. It did offer to consider all of the current language except for the last clause which defines an "emergency." It offered alternative language for Section 2 of Article

11. One proposal establishes two seniority units; one for the Mechanics and another for the rest of the employees. The other involves layoff by classification and seniority. A more detailed explanation appears, infra.

The Union maintained its position relative to Article 9, Section 9 and Article 11, Section 2. It urges that both provisions be maintained without any change in the language.

FACTFINDING

EMPLOYER: ARTICLE 9:SAFETY AND HEALTH - Section 9

The Employer proposed dropping the last sentence of Section 9 of Article 9 which defines an emergency. It stressed it needed more flexibility in directing the workforce, stressing the added cost of being required to have two drivers during an "emergency." It does not contend two drivers are never needed for snow and ice removal. It argues that it needs the flexibility to determine if two drivers are needed, rather than being required to do so on all occasions of snow and ice removal. In Employer's Proposal (Exhibit A) it states:

"The Employer has proposed to eliminate the requirement that two (2) bargaining unit members be required to operate each truck during times of snow and ice control.

Although the Union may dispute otherwise, such a provision has nothing to do with public or employee safety; it is about the generation of mandatory overtime for bargaining unit personnel. While this type of clause may have been permitted to remain when funding was not an issue, now it is an unreasonable restriction on the ability of the Employer to efficiently manage the pub-

lic dollars to which it has been entrusted.

Rationale

1. The Employer's proposal is reasonable.
2. The Union cannot point to any safety standard that requires two (2) bargaining unit members to operate a vehicle when performing snow and ice control.
3. It is unreasonable to allow the Union, through the use of this type of provision, to leverage unnecessary overtime expenditures that must be funded by public tax dollars. Overtime is not an entitlement.
4. The existence of this language in this form is not supported by comparison to internal or external contract language. **(Exhibit B)**"

(Underlining by the Employer)

EMPLOYER: ARTICLE 11: SENIORITY -Section 2

The Township strongly stressed the pitfalls of the language related to applying straight or strict seniority if a layoff were to take place. It states, for example, the three Mechanics who maintain the trucks and other heavy equipment are among the junior employees and would be among the first laid off in a reduction of force (RIF). Should this occur, it contends it would have to contract the maintenance work and said contracting would be considerable more costly than having it done by the Mechanics. It further explained that no RIF was imminent but stressed that the Township has been operating a deficit budget for 2003 through 2006 with net revenue of \$68,607,500 and expenditures of \$75,894,690. (TE-E). It emphasized the Township relies heavily upon the Estate Tax Distribution. From 1993-2006 the Estate Tax totals 33.7 million dol-

lars. (Id) For the period 2003-2006 it totals about \$11,500,000, which represents about sixteen percent of the net revenue for the corresponding years. (Id) The high point occurred in 2005 with the Estate Tax amounting to \$8,311, 104. (Id) In 2006 it amounted to \$794,114. (Id) For 2007 it amounts to about \$4,000,000 according to the Employer. The Township does not argue that it is currently "broke," but stresses past deficit spending and the unpredictability of the Estate Tax. It stressed "comparables," citing its Exhibit C. This Document shows Minimum and Maximum Wages for contiguous or nearby Townships of Austintown, Jackson, Lake, Liberty, Perry, Plain and Weatherfield. It notes Boardman has one of the lowest starting "salaries" at \$27,851, but stresses it rises to \$39,910.17 after only twelve (12) months of employment. Its Maximum Salary of \$41,724.80 is the highest of all of the Townships mentioned above. In addition, Management points to the seven (7) weeks of Vacation, ten Holidays, the full PERS contribution of ten percent and the comprehensive Health Insurance Plan, which includes dental and vision care. It adds Management agreed to forty cents per hour longevity pay. In its Exhibit 2 it states the following:

Employer's Proposal (Exhibit A)

"The Employer has proposed a comprehensive layoff and recall procedure for the contract. The procedure proposed by the Employer is modeled after a standard by classification, by seniority layoff procedure that allows for bumping provided that the member is qualified and capable of performing the duties of the position into which he bumps.

As it stands now, the language mandates that reduction occur by seniority, regardless of classification. This is problematic because the least senior members of the

bargaining unit occupy the classification of mechanic, and other more senior bargaining unit members are not qualified to perform the duties of those positions. Were the Employer to conduct a reduction under the current language, it would be forced into a costly subcontracting arrangement, have to cut deeper into the bargaining unit, and be forced to unreasonably compromise public service. Such a circumstance is unreasonable and contrary to the public interest.

It is not reasonable to allow this bargaining unit to hold the Employer hostage by creating a situation where the Employer's operational integrity is completely compromised by an unreasonable layoff procedure. The Employer is more than willing to allow employees to exercise their seniority to remain employed by bumping less senior employees from positions where they are qualified to do the work. It is unreasonable, however, to create a situation where the Employer's obligation of responsible fiscal management is compromised by a layoff clause that will have a catastrophic effect of the ability to provide services during lean economic times.

Rationale

1. The Employer's proposal is reasonable.
2. The current contract language compromises the operational integrity of the Employer and cuts against the interest of the public.
3. The current language will result in deeper cuts within this bargaining unit than would otherwise be necessary.
4. The Employer's proposal is consistent with the language in its AFSCME service contract. (**Exhibit B**)
5. The Employer's proposal is supported by comparison to external jurisdictions. (**Exhibit C**). (Underlining by Mgt.)

Employer's Exhibit Key

- A. Employer's Position
- B. Boardman Township & AFSCME Contract Language
- C. Employer Language Survey"

UNION: ARTICLE 9:SAFETY AND HEALTH - Section 9

The Union opposes any change in this provision. It stresses that two (2) drivers are only required when a true emergency exists due to snow and/or ice. It points out that the Unit drivers are not driving in a relatively straight line "like County road drivers." They must operate on City streets, with cars parked on both sides of many, negotiate intersections, back up, turn and go forward. The Union believes strongly during an emergency the extra driver is absolutely necessary for the safety of the driver and the safety of the public. The assistant is out of the truck most of the time and may direct traffic as well as directing the Driver. The Union adds this provision has been the CONTRACT for at least twenty (20) years and there has never been a problem, "never a grievance." It also notes there have been cases when Management was shorthanded that Drivers did the job without the second Driver.

UNION ARTICLE 11 - SENIORITY - Section 2

The Union is adamant that this language remain unchanged. It emphasized that job security is critical to protect long-term employees from unjust treatment. It acknowledges that the Estate Tax has historically made a major contribution to the Budget and it is difficult to predict the yearly amount. It also states the Union recognizes the need for fiscal responsibility and has exhibited this recognition during negotiations by agreeing to:

- a. Zero wage increase for each year of a three- year CBA;

- b. Reduction of \$100.00 (one hundred) per employee per year in the clothing allowance and
- c. An uncapped ten percent (10 %) co-payment for the Health Insurance Premium.

It adds Management did agree to Longevity Pay which varies from 25c (twenty five cents) per hour to 40¢ (forty cents) per hour which will kick in the third year. It notes only four (4) employees will receive the maximum, which will amount to about \$800.00 (eight hundred) per year per employee. The Township Workers understand that the Township has CBA's with the Police and the Firefighters, but stresses that the Police received four percent per year in 2005; AFSCME received a cumulative total of two percent and the Firefighters received a cumulative total of two percent.

Concerning a RIF, the Union comments that a news article stated that no Police would be laid off. It adds the Firefighters and AFSCME members have been threatened with layoffs during the past year. The TWA emphasizes that the Unit has declined from thirty five (35) to its current level of twenty seven (27) employees. Further, it stresses within three (3) months another employee will be "leaving" and another will leave within three (3) years. It also commented that Management has a Road Superintendent and two (2) Assistant Superintendents. The TWA adds that one of the Mechanics spends almost all of his time working on Police vehicles.

Finally, the Union states it discussed the Township's financial situation with the Auditor who stated:

- a. If there is a "crunch" it won't be until 2009;
- b. The projections included anticipated wage increases and

- c. About four million (4,000,000) is projected for the Estate Tax.

FINDINGS OF FACT

1. The Union agreed to no wage increases for the next three (3) years.
2. The TWA agreed to a reduction of \$100.00 per employee per year in the Clothing Allowance.
3. The Union agreed to an uncapped ten percent co-payment for the Health Insurance Premium.
4. Longevity Pay was added to the 3rd year of the CBA, ranging from twenty five cents per hour to forty cents per hour.
5. Section 9 of Article 9 has been part of the CBA for some twenty (20) years. There have been no major problems with the administration of this provision. At times when Management is shorthanded Drivers have manned the trucks alone without incident.
6. Historically (or at least since 1993) the Estate Tax has constituted about sixteen (16) percent of the Revenue collected.
7. The workforce has declined in recent years from thirty five (35) to twenty seven (27) and will decline to 26 (twenty six) in about three (3) months.
8. The Township has CBA's with the TWA, FOP, IAAF and AFSCME.
9. Section 2 of Article 11 has been part of the CBA over several LABOR AGREEMENTS and apparently there have been no layoffs during this time. The language requires layoff strictly on the basis of seniority; i.e., the last person hired is the first person laid off.
10. The deficit spending by the Township since 2003 is cause for alarm.
11. Based upon the evidence the Factfinder cannot determine with a reasonable degree of certainty what costs the Township would incur by contracting its vehicle maintenance work as opposed to the cost of having three (3) Mechanics on the payroll.

RECOMMENDATIONS

ARTICLE 9 - SAFETY AND HEALTH - Section 9

The Union contends and the Township agrees this provision has not created any major problems for the Township over at least a twenty year period. The Union stresses the hazards of snow and ice removal as previously noted. The Township stresses the potential financial impact caused by having an "extra" person on the truck which it believes amounts to "featherbedding." The Factfinder took time to determine whether this provision was simply "featherbedding" or "babysitting." The evidence presented by the Union (unrefuted) substantially supports its argument that the provision has been applied to "emergency" situations as defined in the provision. It is recognized that the potential for abuse exists but this was not demonstrated by the history of the application of the provision.

RECOMMENDATION

The Factfinder recommends that Section 9 of Article 9 remain intact.

ARTICLE 11 - SENIORITY - Section 2 - referred to by the Parties As Reduction in Force or "RIF"

The application of this language was discussed in detail. There is no question the language is restrictive and is a departure from RIF language found in almost every CBA seen by this Factfinder over the past thirty five (35) years. Typically LABOR AGREEMENTS include

RIF language which lays off employees by seniority within classification, by seniority according to qualifications and the like. The Factfinder recognizes Management's concern, which is geared toward the Mechanics. They are among the junior employees in seniority and would be among the first laid off.

The evidence does not establish at this time that retention of the current language of Section 2 of Article 11 presents a threat to the fiscal condition of the Township. As noted, the evidence concerning the cost of maintaining the equipment with three (3) bargaining members as opposed to contracting the work is quite inconclusive.

Hopefully the Township's financial condition will improve. To be sure, Management controls the purse strings, and to be sure it has a difficult job. The budget is labor intensive as pointed out by the Township, which is not uncommon in the public sector. As noted by the TWA labor intensive budgets are common when the Employer is providing services, rather than manufacturing a product. While the Township presented enough evidence to show it has a legitimate concern, it did not present compelling arguments to warrant immediately altering the language. The fact the bargaining unit has been reduced by fifteen (15) percent without any stated or alleged loss of services to the public represents a significant cost saving to Management. If unfortunately a RIF takes place under this CBA the Parties have the authority to address the situation and have options to act in the interests of the public, while at the same time bargaining in good faith to protect and preserve the rights of the Township and the rights of the bargaining unit.

RECOMMENDATION

The Factfinder recommends that the current language of Section 2 of Article 11 be maintained.



Norman R. Harlan, Factfinder

Steubenville, Ohio

February 19, 2008